

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA,**  
**ex rel. ALCHEMY ASSET**  
**SERVICES, INC.,**

Plaintiff-Relator,

v.

**GLAXOSMITHKLINE CONSUMER**  
**HEALTHCARE, LP and**  
**GLAXOSMITHKLINE, LLC,**

Defendants.

**CASE NO.:**

**JURY TRIAL DEMANDED**

**COMPLAINT FOR FALSE PATENT MARKING AND JURY DEMAND**

Plaintiff-Relator Alchemy Asset Services, Inc., by its undersigned counsel, files this Complaint for False Patent Marking against Defendants GlaxoSmithKline Consumer HealthCare, LP and GlaxoSmithKline, LLC (collectively “GlaxoSmithKline”), stating as follows:

**Nature of the Case**

1. This is a *qui tam* action for false marking in violation of 35 U.S.C. § 292.
2. As set forth herein, Defendants marked, advertised and marketed one or more products (more specifically identified below) with expired patent numbers and/or marked, advertised and marketed such products as patent-protected in violation of 35 U.S.C § 292(b).
3. Plaintiff-Relator Alchemy Asset Services, Inc. requests damages against Defendants equal to a fine in the amount of \$500 for each instance of false marking. Pursuant to 35 U.S.C. § 292(b), one-half of the damage award shall be paid to the United States and one-half shall be paid to Plaintiff-Relator.

**The Parties**

4. Plaintiff-Relator Alchemy Asset Services, Inc. (“Alchemy”) is a Pennsylvania corporation.

5. Defendant GlaxoSmithKline Consumer HealthCare, LP is a Pennsylvania limited partnership with a principal place of business at 1000 GSK Drive, Moon Township (Coraopolis), Pennsylvania 15108-1330. GlaxoSmithKline Consumer HealthCare, LP is headquartered in and regularly conducts business in the Western District of Pennsylvania, including, without limitation, the sale of the product at issue herein.

6. Defendant GlaxoSmithKline, LLC is a Delaware corporation authorized to do business in Pennsylvania with a registered address of One Franklin Plaza, 200 N. 16th Street, Philadelphia, Pennsylvania 19106. GlaxoSmithKline, LLC regularly conducts business in the Western District of Pennsylvania, including, without limitation, the sale of the product at issue herein.

**Jurisdiction and Venue**

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1355(a).

8. Venue in this District is proper under 28 U.S.C. §§ 1391 and 1395. Defendants regularly advertise, market and sell products in this district, including the product that is the subject of this Complaint.

**False Marking**

9. GlaxoSmithKline markets dozens of consumer and healthcare products. GlaxoSmithKline describes itself as “one of the world’s largest over-the-counter healthcare products company [*sic*]” and as “one of the world’s leading research-based pharmaceutical and healthcare companies.”

10. GlaxoSmithKline is a sophisticated company with years of experience applying for, prosecuting, securing, receiving assignment of, and litigating patents, and therefore knows that patents do not have unlimited duration, but rather have a limited duration.

11. As set forth below, GlaxoSmithKline has marked and advertises its products using the word “patent” (or variations thereon) and/or combinations of the word “patent” and a patent number, declaring and advertising that the product is patented under the laws of the United States, and has done so on and after the date on which such products were not patented or otherwise subject to patent protection, for purposes of deceiving the public, including deception in connection with the advertising, marketing, promotion, pricing and sale of such products.

12. By reason of such conduct, therefore, GlaxoSmithKline has “falsely marked” its products for purposes of deceiving the public in violation of 35 U.S.C. § 292(a).

**COUNT I – “FIBER CHOICE” SUPPLEMENT**

13. Plaintiff-Relator incorporates paragraphs 1 through 12 as if repeated in their entirety.

14. GlaxoSmithKline sells and offers for sale a product called “Fiber Choice.”

15. GlaxoSmithKline marks and advertises its “Fiber Choice” product and/or product packaging with the word “patent” and/or one or more patent numbers, including United States Patent Number 5,087,623 (the “‘623 Patent”).

16. The ‘623 Patent issued on February 11, 1992. Pursuant to the provisions of 35 U.S.C. § 154 governing the duration of United States patent protection then in effect, the ‘623 Patent expired on March 21, 2009.

17. Despite the foregoing expiration, and in violation of 35 U.S.C. § 292(a), GlaxoSmithKline has marked its product and/or product packaging with the word “patent” and/or the foregoing United States patent number on and after the date on which such patent expired, with intent to deceive the public.

### **PRAYER FOR RELIEF**

WHEREFORE Plaintiff-Relator requests this Honorable Court grant the following relief:

- A. Declare that GlaxoSmithKline Consumer HealthCare, LP and GlaxoSmithKline, LLC have violated 35 U.S.C. § 292;
- B. Require GlaxoSmithKline Consumer HealthCare, LP and GlaxoSmithKline, LLC to account for and enumerate the total number of units of each product identified herein that they falsely marked, in order to determine the civil monetary fine due the United States and Plaintiff-Relator;
- C. Fine GlaxoSmithKline Consumer HealthCare, LP and GlaxoSmithKline, LLC \$500 for each unit of each such product falsely marked in violation of 35 U.S.C. § 292;
- D. Declare this case to be an exceptional case and award Plaintiff-Relator its costs and attorney’s fees as allowed under 35 U.S.C. § 285; and

- E. Enter judgment in favor of the United States and Plaintiff-Relator and against GlaxoSmithKline Consumer HealthCare, LP and GlaxoSmithKline, LLC in the amounts determined above.

**DEMAND FOR JURY TRIAL**

Plaintiff-Relator hereby demands a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Respectfully submitted,

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